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(initials)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,402	12/31/2003	Paul T. Van Gompel	19,577	8997
23556	7590	08/28/2006	EXAMINER	
KIMBERLY-CLARK WORLDWIDE, INC. 401 NORTH LAKE STREET NEENAH, WI 54956			CHAPMAN, GINGER T	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 08/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/750,402	VAN GOMPEL ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Ginger T. Chapman	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 23 June 2006.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 34,38,39,43-45 and 48-51 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 34,38,39,43-45 and 48-51 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 31 December 2003 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 23 June 2006 has been entered.

### ***Status of the claims***

By way of applicant's amendment filed 23 June 2006, claims 36-37, 40-42 and 46-47 are cancelled; claims 34, 38-39, 43-45 and 48-51 are pending in the application.

### ***~~Claim Rejections - 35 USC § 102~~ / Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 34, 38-39, 43-45 and 48-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Van Gompel et al (US 6,193,701) in view of Mishima et al (US 2002/0072726 A1).

With regard to claim 34, as seen in Figures 1-3 and 7-8, Van Gompel et al disclose a disposable absorbent garment (figs. 1 and 7) comprising: an elastic outer layer having an outer layer perimeter (c. 1, l. 46-49); an elastic inner layer (c. 1, ll. 46-49; c. 3, ll. 25-30) wherein the

elastic inner layer has an elastic inner layer perimeter bonded to outer layer perimeter with a plurality of ultrasonic, adhesive or thermal bonds (c. 5, ll. 40-50); and an absorbent assembly (52) including a topsheet layer (68), a core layer (70) and a barrier layer (64).

Van Gompel does not expressly disclose the elastic inner layer defining an opening. Mishima et al, at p. 1, [0003-4] expresses the desire for elastic inner layer to have an opening to prevent body waste held on the surface of the elastic inner layer from sticking to the wearer's skin. As seen in Figure 1, Mishima et al disclose an elastic inner layer (7) defining an opening (8). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the elastic inner layer of Van Gompel defining an opening as taught by Mishima et al, since Mishima states at p. 3, [0040] that the advantage of forming a diaper with this design is that such an opening minimizes the problem of body waste held on the elastic inner layer sticking to the wearer's skin thereby providing a cleaner more sanitary diaper.

With regard to claim 38, Van Gompel discloses outer layer but does not expressly disclose the outer layer is liquid impermeable. Mishima et al, at p. 4 [0055-56] teaches the ability of the outer layer to be liquid impermeable and have high strength and flexibility to improve fit and reduce leakage thus disclosing the desire for a liquid impermeable outer layer. As seen in Figure 1, Mishima et al teach a diaper having a liquid impermeable outer layer. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the outer layer of Van Gompel liquid impermeable as taught by Mishima since Mishima state at [0056] that the benefit of forming a diaper with such an outer layer is that it has high water resistant properties, high strength and flexibility.

With regard to claim 39, Van Gompel et al disclose the outer layer is liquid impermeable (c. 6, l. 60; c. 7, ll. 20-40).

With regard to claims 43-45, Mishima et al disclose the elastic inner layer (7) is elastic in both a longitudinal and lateral direction (p. 2, [0028]), is liquid impermeable [0025] and includes two or more layers of materials [0031].

With regard to claims 48 and 49, Mishima et al disclose the outer layer (5) length is greater than the inner layer (7) length and the outer layer (5) width is greater than the inner layer (7) width [0037, 0043-45; fig. 3].

With regard to claim 50, Van Gompel et al disclose the perimeter bonded area has a percentage of bonded area to unbonded area of from 10 to 40 (c. 3, ll. 30-35 and ll. 60-66; c. 11, ll. 50-65; c. 15, ll. 50-55).

With regard to claim 51, as best depicted in Figure 2, Van Gompel et al disclose the absorbent assembly (52) is attached (62) to outer layer (24) along a lateral centerline of absorbent assembly (52).

### ***Response to Arguments***

Applicant's arguments with respect to claims 34, 38, 39, 43-45 and 48-51 have been considered but are moot in view of the new grounds of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ginger T. Chapman whose telephone number is (571) 272-4934. The examiner can normally be reached on Monday through Friday 8:30 a.m. to 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ginger Chapman  
Examiner, Art Unit 3761  
08/18/06

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TATYANA ZALUKAEVA  
SUPERVISORY PRIMARY EXAMINER

